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IN THE
Supreme Court of the United States

OCTOBER TERM, 1955

No. 117

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
Appellant,

v.

UNION PACIFIC RAILROAD COMPANY, ET AL.

No. 118

UNION PACIFIC RAILROAD COMPANY, ET AL., *Appellants,*

v.

UNITED STATES OF AMERICA, ET AL.

No. 119

UNITED STATES OF AMERICA, ET AL., *Appellants,*

v.

UNION PACIFIC RAILROAD COMPANY, ET AL.

Appeals from the United States District Court for the
District of Nebraska, Omaha Division

**BRIEF OF APPELLANT, THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY, IN OPPOSITION
TO MOTION TO AFFIRM IN NOS. 117 AND 118 AND TO
REVERSE IN NO. 119**

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REVERSE IN NO. 118**

STATEMENT

As authorized in Rule 16 of the Revised Rules of this Court, this brief is filed for The Denver and Rio Grande Western Railroad Company, herein called the Rio Grande, appellant in No. 117 of the cases shewn in the above title, in opposition to the motion of the Union Pacific Railroad

Company, et al, to affirm the judgment of the court below in Nos. 117 and 119 and to reverse the judgment of the court below in No. 118. The motion was filed with the Supreme Court and served upon the interested parties on June 29, 1955. Upon the request of the Interstate Commerce Commission and the United States of America, the time for filing briefs in opposition to the motion was enlarged to August 4, 1955.

Since the decision of the Interstate Commerce Commission, which is reported in 287 I.C.C. 611, and is assailed as invalid by the movants, and the opinion of the court below for the District of Nebraska, Omaha Division, copy of which is attached to the jurisdictional statements, clearly reveal that the questions presented by the appeals are substantial and are of general public importance, little or no argument is necessary or will be made to show that the motion should be denied and that the court should consider the appeals on their respective merits.

The movants devoted 36 printed pages in their jurisdictional statement to show that the questions involved are substantial and important. This is also demonstrated by the 28 printed pages in the motion to affirm and to reverse. While thus tacitly conceding that the questions involved are substantial and important, the movants nevertheless urge that the judgment of the court below in Nos. 117 and 119, in which the Rio Grande, the United States and the Interstate Commerce Commission are appellants, should be affirmed but that the judgment of the court below in No. 118, in which the Union Pacific Railroad Company and others are appellants, should be reversed. This is indeed an extraordinary treatment of the questions. The movants apparently desire to have their cake and eat it too.

The jurisdictional statements filed by the movants, the United States, the Interstate Commerce Commission, and the Rio Grande are enough, without more, to show that

the questions presented by the appeals are substantial and of public importance and should not be resolved by this court until the interested parties have been permitted to file briefs and accorded the privilege of oral argument on the merits of the questions involved in the appeals.

The contentions and arguments made by movants in their motion to affirm and to reverse are largely a reiteration of the contentions and arguments made by them in their jurisdictional statement. In the circumstances, it is not considered necessary to deal *seriatim* with these contentions and arguments in this reply. Instead and to avoid unnecessary reiteration and repetition we ask the court to consider as a part of this reply the joint jurisdictional statement of the United States and the Interstate Commerce Commission and the jurisdictional statement of the Rio Grande. It is sufficient to say that none of the contentions and arguments made in the motion warrant the granting of the motion.

The motion should be denied.

Respectfully submitted,

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July 28, 1955

PROOF OF SERVICE

I, ROBERT E. QUIRK, one of the attorneys for the appellant, The Denver & Rio Grande Western Railroad Company, and a member of the bar of the Supreme Court of the United States, hereby certify that on July 28, 1955, I

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served copies of the foregoing Brief In Opposition To Motion To Affirm on the several parties as follows:

1. On the United States by mailing a copy in a duly addressed envelope with first-class postage prepaid to:

Honorable Simon E. Sobeloff
Solicitor General of the United States
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Washington 25, D. C.

E. Riggs McConnell, Esq.
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and with air-mail postage prepaid to:

Donald R. Ross, Esq.
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306 Post Office Building
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2. On the United States Department of Agriculture by mailing a copy in a duly addressed envelope with first-class postage prepaid to:

Henry B. Cockrum, Esq.
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3. On the Interstate Commerce Commission by mailing a copy in a duly addressed envelope with first-class postage prepaid to:

Samuel R. Howell, Esq.
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Washington 25, D. C.

4. On the Union Pacific Railroad Company; Chicago and North Western Railway Company; Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Wabash Railroad Company; Northern Pacific Railway Company; Great Northern Railway Company, plaintiffs; and employee organization of Union Pacific Railroad Company, intervening plaintiffs; by mailing a copy in a duly addressed envelope with air-mail postage prepaid to their respective attorneys of record, as follows:

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5. On the State of Nebraska and the Nebraska State Railroad Commission; Washington Public Service Commission; Public Utilities Commission of Oregon; Board of Railroad Commissioners of the State of Montana; State Board of Equalization of Wyoming; Public Service Commission of Wyoming; Public Service Commission of Utah; National Livestock Producers Association, by mailing a copy in a duly addressed envelope with air-mail postage prepaid to their respective attorneys of record, as follows:

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